

By Senator Gutman

2-1249-99

1 A bill to be entitled
 2 An act relating to insurance; amending s.
 3 627.351, F.S.; including surplus lines insurers
 4 in the Florida Windstorm Underwriting
 5 Association; modifying the makeup of the
 6 association's board; providing for assessments;
 7 providing for assessment protection; providing
 8 for rate approval; providing an effective date.

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 10 Be It Enacted by the Legislature of the State of Florida:

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 12 Section 1. Subsection (2) of section 627.351, Florida
 13 Statutes, 1998 Supplement, is amended to read:

14 627.351 Insurance risk apportionment plans.--

15 (2) WINDSTORM INSURANCE RISK APPORTIONMENT.--

16 (a) Agreements may be made among property insurers
 17 with respect to the equitable apportionment among them of
 18 insurance which may be afforded applicants who are in good
 19 faith entitled to, but are unable to procure, such insurance
 20 through ordinary methods; and such insurers may agree among
 21 themselves on the use of reasonable rate modifications for
 22 such insurance. Such agreements and rate modifications shall
 23 be subject to the applicable provisions of this chapter.

24 (b) The department shall require all insurers holding
 25 a certificate of authority to transact property insurance on a
 26 direct basis in this state, including authorized surplus lines
 27 insurers writing property insurance in this state, but not
 28 including ~~other than~~ joint underwriting associations and other
 29 entities formed pursuant to this section, to provide windstorm
 30 coverage to applicants from areas determined to be eligible
 31 pursuant to paragraph (c) who in good faith are entitled to,

1 but are unable to procure, such coverage through ordinary
2 means; or it shall adopt a reasonable plan or plans for the
3 equitable apportionment or sharing among such insurers of
4 windstorm coverage, which may include formation of an
5 association for this purpose. As used in this subsection, the
6 term "property insurance" means insurance on real or personal
7 property, as defined in s. 624.604, including insurance for
8 fire, industrial fire, allied lines, farmowners multiperil,
9 homeowners' multiperil, commercial multiperil, and mobile
10 homes, and including liability coverages on all such
11 insurance, but excluding inland marine as defined in s.
12 624.607(3) and excluding vehicle insurance as defined in s.
13 624.605(1)(a) other than insurance on mobile homes used as
14 permanent dwellings. The department shall adopt rules that
15 provide a formula for the recovery and repayment of any
16 deferred assessments.

17 1. For the purpose of this section, properties
18 eligible for such windstorm coverage are defined as dwellings,
19 buildings, and other structures, including mobile homes which
20 are used as dwellings and which are tied down in compliance
21 with mobile home tie-down requirements prescribed by the
22 Department of Highway Safety and Motor Vehicles pursuant to s.
23 320.8325, and the contents of all such properties. An
24 applicant or policyholder is eligible for coverage only if an
25 offer of coverage cannot be obtained by or for the applicant
26 or policyholder from an admitted insurer at approved rates.

27 2.a.(I) All insurers required to be members of such
28 association shall participate in its writings, expenses, and
29 losses. Surplus of the association shall be retained for the
30 payment of claims and shall not be distributed to the member
31 insurers. Such participation by member insurers shall be in

1 the proportion that the net direct premiums of each member
2 insurer written for property insurance in this state during
3 the preceding calendar year bear to the aggregate net direct
4 premiums for property insurance of all member insurers, as
5 reduced by any credits for voluntary writings, in this state
6 during the preceding calendar year. For the purposes of this
7 subsection, the term "net direct premiums" means direct
8 written premiums for property insurance, reduced by premium
9 for liability coverage and for the following if included in
10 allied lines: rain and hail on growing crops; livestock;
11 association direct premiums booked; National Flood Insurance
12 Program direct premiums; and similar deductions specifically
13 authorized by the plan of operation and approved by the
14 department. A member's participation shall begin on the first
15 day of the calendar year following the year in which it is
16 issued a certificate of authority to transact property
17 insurance in the state and shall terminate 1 year after the
18 end of the calendar year during which it no longer holds a
19 certificate of authority to transact property insurance in the
20 state. The commissioner, after review of annual statements,
21 other reports, and any other statistics that the commissioner
22 deems necessary, shall certify to the association the
23 aggregate direct premiums written for property insurance in
24 this state by all member insurers.

25 (II) The plan of operation shall provide for a board
26 of directors consisting of the Insurance Consumer Advocate
27 appointed under s. 627.0613, 1 consumer representative
28 appointed by the Insurance Commissioner, 1 insurance agent
29 appointed by the Insurance Commissioner who is, at the time of
30 appointment, writing insurance with the Florida Windstorm
31 Underwriting Association, 1 consumer representative appointed

1 by the Governor, and 12 additional members appointed as
2 specified in the plan of operation. One of the 12 additional
3 members shall be elected by the domestic companies of this
4 state on the basis of cumulative weighted voting based on the
5 net direct premiums of domestic companies in this state, and
6 one shall be elected by the surplus lines insurers on the
7 basis of cumulative weighted voting based on the net direct
8 premium of surplus lines written in this state. Nothing in the
9 1997 amendments to this paragraph terminates the existing
10 board or the terms of any members of the board.

11 (III) The plan of operation shall provide a formula
12 whereby a company voluntarily providing windstorm coverage in
13 affected areas will be relieved wholly or partially from
14 apportionment of a regular assessment pursuant to
15 sub-sub-subparagraph d.(I) or sub-sub-subparagraph d.(II).

16 (IV) A company which is a member of a group of
17 companies under common management may elect to have its
18 credits applied on a group basis, and any company or group may
19 elect to have its credits applied to any other company or
20 group.

21 (V) There shall be no credits or relief from
22 apportionment to a company for emergency assessments collected
23 from its policyholders under sub-sub-subparagraph d.(III).

24 (VI) The plan of operation may also provide for the
25 award of credits, for a period not to exceed 3 years, from a
26 regular assessment pursuant to sub-sub-subparagraph d.(I) or
27 sub-sub-subparagraph d.(II) as an incentive for taking
28 policies out of the Residential Property and Casualty Joint
29 Underwriting Association. In order to qualify for the
30 exemption under this sub-sub-subparagraph, the take-out plan
31 must provide that at least 40 percent of the policies removed

1 from the Residential Property and Casualty Joint Underwriting
2 Association cover risks located in Dade, Broward, and Palm
3 Beach Counties or at least 30 percent of the policies so
4 removed cover risks located in Dade, Broward, and Palm Beach
5 Counties and an additional 50 percent of the policies so
6 removed cover risks located in other coastal counties, and
7 must also provide that no more than 15 percent of the policies
8 so removed may exclude windstorm coverage. With the approval
9 of the department, the association may waive these geographic
10 criteria for a take-out plan that removes at least the lesser
11 of 100,000 Residential Property and Casualty Joint
12 Underwriting Association policies or 15 percent of the total
13 number of Residential Property and Casualty Joint Underwriting
14 Association policies, provided the governing board of the
15 Residential Property and Casualty Joint Underwriting
16 Association certifies that the take-out plan will materially
17 reduce the Residential Property and Casualty Joint
18 Underwriting Association's 100-year probable maximum loss from
19 hurricanes. With the approval of the department, the board
20 may extend such credits for an additional year if the insurer
21 guarantees an additional year of renewability for all policies
22 removed from the Residential Property and Casualty Joint
23 Underwriting Association, or for 2 additional years if the
24 insurer guarantees 2 additional years of renewability for all
25 policies removed from the Residential Property and Casualty
26 Joint Underwriting Association.

27 b. Assessments to pay deficits in the association
28 under this subparagraph and premiums paid by members for
29 insurance purchased under the provisions of sub-subparagraph
30 4.b. shall be included as an appropriate factor in the making
31 of rates as provided in s. 627.3512.

1 c. The Legislature finds that the potential for
2 unlimited deficit assessments under this subparagraph may
3 induce insurers to attempt to reduce their writings in the
4 voluntary market, and that such actions would worsen the
5 availability problems that the association was created to
6 remedy. It is the intent of the Legislature that insurers
7 remain fully responsible for paying regular assessments and
8 collecting emergency assessments for any deficits of the
9 association; however, it is also the intent of the Legislature
10 to provide a means by which assessment liabilities may be
11 amortized over a period of years.

12 d.(I) When the deficit incurred in a particular
13 calendar year is 10 percent or less of the aggregate statewide
14 direct written premium for property insurance for the prior
15 calendar year for all member insurers, the association shall
16 levy an assessment on member insurers in an amount equal to
17 the deficit.

18 (II) When the deficit incurred in a particular
19 calendar year exceeds 10 percent of the aggregate statewide
20 direct written premium for property insurance for the prior
21 calendar year for all member insurers, the association shall
22 levy an assessment on member insurers in an amount equal to
23 the greater of 10 percent of the deficit or 10 percent of the
24 aggregate statewide direct written premium for property
25 insurance for the prior calendar year for member insurers. Any
26 remaining deficit shall be recovered through emergency
27 assessments under sub-sub-subparagraph (III).

28 (III) Upon a determination by the board of directors
29 that a deficit exceeds the amount that will be recovered
30 through regular assessments on member insurers, pursuant to
31 sub-sub-subparagraph (I) or sub-sub-subparagraph (II), the

1 board shall levy, after verification by the department,
2 emergency assessments to be collected by member insurers and
3 by underwriting associations created pursuant to this section
4 which write property insurance, upon issuance or renewal of
5 property insurance policies other than National Flood
6 Insurance policies in the year or years following levy of the
7 regular assessments. The amount of the emergency assessment
8 collected in a particular year shall be a uniform percentage
9 of that year's direct written premium for property insurance
10 for all member insurers and underwriting associations,
11 excluding National Flood Insurance policy premiums, as
12 annually determined by the board and verified by the
13 department. The department shall verify the arithmetic
14 calculations involved in the board's determination within 30
15 days after receipt of the information on which the
16 determination was based. Notwithstanding any other provision
17 of law, each member insurer and each underwriting association
18 created pursuant to this section shall collect emergency
19 assessments from its policyholders without such obligation
20 being affected by any credit, limitation, exemption, or
21 deferment. The emergency assessments so collected shall be
22 transferred directly to the association on a periodic basis as
23 determined by the association. The aggregate amount of
24 emergency assessments levied under this sub-sub-subparagraph
25 in any calendar year may not exceed the greater of 10 percent
26 of the amount needed to cover the original deficit, plus
27 interest, fees, commissions, required reserves, and other
28 costs associated with financing of the original deficit, or 10
29 percent of the aggregate statewide direct written premium for
30 property insurance written by member insurers and underwriting
31 associations for the prior year, plus interest, fees,

1 commissions, required reserves, and other costs associated
2 with financing the original deficit. The board may pledge the
3 proceeds of the emergency assessments under this
4 sub-sub-subparagraph as the source of revenue for bonds, to
5 retire any other debt incurred as a result of the deficit or
6 events giving rise to the deficit, or in any other way that
7 the board determines will efficiently recover the deficit. The
8 emergency assessments under this sub-sub-subparagraph shall
9 continue as long as any bonds issued or other indebtedness
10 incurred with respect to a deficit for which the assessment
11 was imposed remain outstanding, unless adequate provision has
12 been made for the payment of such bonds or other indebtedness
13 pursuant to the document governing such bonds or other
14 indebtedness. Emergency assessments collected under this
15 sub-sub-subparagraph are not part of an insurer's rates, are
16 not premium, and are not subject to premium tax, fees, or
17 commissions; however, failure to pay the emergency assessment
18 shall be treated as failure to pay premium.

19 (IV) Each member insurer's share of the total regular
20 assessments under sub-sub-subparagraph (I) or
21 sub-sub-subparagraph (II) shall be in the proportion that the
22 insurer's net direct premium for property insurance in this
23 state, for the year preceding the assessment bears to the
24 aggregate statewide net direct premium for property insurance
25 of all member insurers, as reduced by any credits for
26 voluntary writings for that year.

27 (V) If regular deficit assessments are made under
28 sub-sub-subparagraph (I) or sub-sub-subparagraph (II), or by
29 the Residential Property and Casualty Joint Underwriting
30 Association under sub-subparagraph (6)(b)3.a. or
31 sub-subparagraph (6)(b)3.b., the association shall levy upon

1 the association's policyholders, as part of its next rate
2 filing, or by a separate rate filing solely for this purpose,
3 a market equalization surcharge in a percentage equal to the
4 total amount of such regular assessments divided by the
5 aggregate statewide direct written premium for property
6 insurance for member insurers for the prior calendar year.
7 Market equalization surcharges under this sub-sub-subparagraph
8 are not considered premium and are not subject to commissions,
9 fees, or premium taxes; however, failure to pay a market
10 equalization surcharge shall be treated as failure to pay
11 premium.

12 e. The governing body of any unit of local government,
13 any residents of which are insured under the plan, may issue
14 bonds as defined in s. 125.013 or s. 166.101 to fund an
15 assistance program, in conjunction with the association, for
16 the purpose of defraying deficits of the association. In order
17 to avoid needless and indiscriminate proliferation,
18 duplication, and fragmentation of such assistance programs,
19 any unit of local government, any residents of which are
20 insured by the association, may provide for the payment of
21 losses, regardless of whether or not the losses occurred
22 within or outside of the territorial jurisdiction of the local
23 government. Revenue bonds may not be issued until validated
24 pursuant to chapter 75, unless a state of emergency is
25 declared by executive order or proclamation of the Governor
26 pursuant to s. 252.36 making such findings as are necessary to
27 determine that it is in the best interests of, and necessary
28 for, the protection of the public health, safety, and general
29 welfare of residents of this state and the protection and
30 preservation of the economic stability of insurers operating
31 in this state, and declaring it an essential public purpose to

1 permit certain municipalities or counties to issue bonds as
2 will provide relief to claimants and policyholders of the
3 association and insurers responsible for apportionment of plan
4 losses. Any such unit of local government may enter into such
5 contracts with the association and with any other entity
6 created pursuant to this subsection as are necessary to carry
7 out this paragraph. Any bonds issued under this
8 sub-subparagraph shall be payable from and secured by moneys
9 received by the association from assessments under this
10 subparagraph, and assigned and pledged to or on behalf of the
11 unit of local government for the benefit of the holders of
12 such bonds. The funds, credit, property, and taxing power of
13 the state or of the unit of local government shall not be
14 pledged for the payment of such bonds. If any of the bonds
15 remain unsold 60 days after issuance, the department shall
16 require all insurers subject to assessment to purchase the
17 bonds, which shall be treated as admitted assets; each insurer
18 shall be required to purchase that percentage of the unsold
19 portion of the bond issue that equals the insurer's relative
20 share of assessment liability under this subsection. An
21 insurer shall not be required to purchase the bonds to the
22 extent that the department determines that the purchase would
23 endanger or impair the solvency of the insurer. The authority
24 granted by this sub-subparagraph is additional to any bonding
25 authority granted by subparagraph 6.

26 3. The plan shall also provide that any member with a
27 surplus as to policyholders of \$20 million or less writing 25
28 percent or more of its total countrywide property insurance
29 premiums in this state may petition the department, within the
30 first 90 days of each calendar year, to qualify as a limited
31 apportionment company. The apportionment of such a member

1 company in any calendar year for which it is qualified shall
2 not exceed its gross participation, which shall not be
3 affected by the formula for voluntary writings. In no event
4 shall a limited apportionment company be required to
5 participate in any apportionment of losses pursuant to
6 sub-sub-subparagraph 2.d.(I) or sub-sub-subparagraph 2.d.(II)
7 in the aggregate which exceeds \$50 million after payment of
8 available plan funds in any calendar year. However, a limited
9 apportionment company shall collect from its policyholders any
10 emergency assessment imposed under sub-sub-subparagraph
11 2.d.(III). The plan shall provide that, if the department
12 determines that any regular assessment will result in an
13 impairment of the surplus of a limited apportionment company,
14 the department may direct that all or part of such assessment
15 be deferred. However, there shall be no limitation or
16 deferment of an emergency assessment to be collected from
17 policyholders under sub-sub-subparagraph 2.d.(III).

18 4.a. The plan shall provide for the deferment, in
19 whole or in part, of a regular assessment of a member insurer
20 under sub-sub-subparagraph 2.d.(I) or sub-sub-subparagraph
21 2.d.(II), but not for an emergency assessment collected from
22 policyholders under sub-sub-subparagraph 2.d.(III), if, in the
23 opinion of the commissioner, payment of such regular
24 assessment would endanger or impair the solvency of the member
25 insurer. In the event a regular assessment against a member
26 insurer is deferred in whole or in part, the amount by which
27 such assessment is deferred may be assessed against the other
28 member insurers in a manner consistent with the basis for
29 assessments set forth in sub-sub-subparagraph 2.d.(I) or
30 sub-sub-subparagraph 2.d.(II).

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1 b. The association shall develop and offer to all
2 members a policy of insurance that provides the member with
3 protection in whole or in part for any regular assessment. The
4 coverage must be developed after consultation with the
5 members, and the premium must not be inadequate, excessive, or
6 unfairly discriminatory. The association shall use premiums
7 collected for such coverage to reduce future regular
8 assessments or to purchase reinsurance intended to reduce
9 future regular assessments. The rates are considered approved
10 unless there is question as to the credibility of the data
11 used to determine the loss and expense experience. The use of
12 hurricane models of the Florida Windstorm Underwriting
13 Association's choice may not be disapproved by the department.
14 If the department has reason to question the credibility of
15 the loss and expense data, the department must initiate
16 proceedings to disapprove the rate and so notify the
17 association or shall finalize its review within 60 days after
18 receipt of filing. Unless the department issues a notice under
19 this paragraph, the filing is considered approved 60 days
20 after its receipt by the department.

21 5.a. The plan of operation may include deductibles and
22 rules for classification of risks and rate modifications
23 consistent with the objective of providing and maintaining
24 funds sufficient to pay catastrophe losses.

25 b. The association may require arbitration of a rate
26 filing under s. 627.062(6). It is the intent of the
27 Legislature that the rates for coverage provided by the
28 association be actuarially sound and not competitive with
29 approved rates charged in the admitted voluntary market such
30 that the association functions as a residual market mechanism
31 to provide insurance only when the insurance cannot be

1 procured in the voluntary market. The plan of operation shall
2 provide a mechanism to assure that, beginning no later than
3 January 1, 1999, the rates charged by the association for each
4 line of business are reflective of approved rates in the
5 voluntary market for hurricane coverage for each line of
6 business in the various areas eligible for association
7 coverage.

8 c. The association shall provide for windstorm
9 coverage on residential properties in limits up to \$10 million
10 for commercial lines residential risks and up to \$1 million
11 for personal lines residential risks. If coverage with the
12 association is sought for a residential risk valued in excess
13 of these limits, coverage shall be available to the risk up to
14 the replacement cost or actual cash value of the property, at
15 the option of the insured, if coverage for the risk cannot be
16 located in the authorized market. The association must accept
17 a commercial lines residential risk with limits above \$10
18 million or a personal lines residential risk with limits above
19 \$1 million if coverage is not available in the authorized
20 market. The association may write coverage above the limits
21 specified in this subparagraph with or without facultative or
22 other reinsurance coverage, as the association determines
23 appropriate.

24 d. The plan of operation must provide objective
25 criteria and procedures, approved by the department, to be
26 uniformly applied for all applicants in determining whether an
27 individual risk is so hazardous as to be uninsurable. In
28 making this determination and in establishing the criteria and
29 procedures, the following shall be considered:

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1 (I) Whether the likelihood of a loss for the
2 individual risk is substantially higher than for other risks
3 of the same class; and

4 (II) Whether the uncertainty associated with the
5 individual risk is such that an appropriate premium cannot be
6 determined.

7
8 The acceptance or rejection of a risk by the association
9 pursuant to such criteria and procedures must be construed as
10 the private placement of insurance, and the provisions of
11 chapter 120 do not apply.

12 e. The policies issued by the association must provide
13 that if the association obtains an offer from an authorized
14 insurer to cover the risk at its approved rates under either a
15 standard policy including wind coverage or, if consistent with
16 the insurer's underwriting rules as filed with the department,
17 a basic policy including wind coverage, the risk is no longer
18 eligible for coverage through the association. Upon
19 termination of eligibility, the association shall provide
20 written notice to the policyholder and agent of record stating
21 that the association policy must be canceled as of 60 days
22 after the date of the notice because of the offer of coverage
23 from an authorized insurer. Other provisions of the insurance
24 code relating to cancellation and notice of cancellation do
25 not apply to actions under this sub-subparagraph.

26 f. Association policies and applications must include
27 a notice that the association policy could, under this
28 section, be replaced with a policy issued by an authorized
29 insurer that does not provide coverage identical to the
30 coverage provided by the association. The notice shall also
31 specify that acceptance of association coverage creates a

1 conclusive presumption that the applicant or policyholder is
2 aware of this potential.

3 6.a. The plan of operation may authorize the formation
4 of a private nonprofit corporation, a private nonprofit
5 unincorporated association, a partnership, a trust, a limited
6 liability company, or a nonprofit mutual company which may be
7 empowered, among other things, to borrow money by issuing
8 bonds or by incurring other indebtedness and to accumulate
9 reserves or funds to be used for the payment of insured
10 catastrophe losses. The plan may authorize all actions
11 necessary to facilitate the issuance of bonds, including the
12 pledging of assessments or other revenues.

13 b. Any entity created under this subsection, or any
14 entity formed for the purposes of this subsection, may sue and
15 be sued, may borrow money; issue bonds, notes, or debt
16 instruments; pledge or sell assessments, market equalization
17 surcharges and other surcharges, rights, premiums, contractual
18 rights, projected recoveries from the Florida Hurricane
19 Catastrophe Fund, other reinsurance recoverables, and other
20 assets as security for such bonds, notes, or debt instruments;
21 enter into any contracts or agreements necessary or proper to
22 accomplish such borrowings; and take other actions necessary
23 to carry out the purposes of this subsection. The association
24 may issue bonds or incur other indebtedness, or have bonds
25 issued on its behalf by a unit of local government pursuant to
26 subparagraph (g)2., in the absence of a hurricane or other
27 weather-related event, upon a determination by the association
28 subject to approval by the department that such action would
29 enable it to efficiently meet the financial obligations of the
30 association and that such financings are reasonably necessary
31 to effectuate the requirements of this subsection. Any such

1 entity may accumulate reserves and retain surpluses as of the
2 end of any association year to provide for the payment of
3 losses incurred by the association during that year or any
4 future year. The association shall incorporate and continue
5 the plan of operation and articles of agreement in effect on
6 the effective date of chapter 76-96, Laws of Florida, to the
7 extent that it is not inconsistent with chapter 76-96, and as
8 subsequently modified consistent with chapter 76-96. The board
9 of directors and officers currently serving shall continue to
10 serve until their successors are duly qualified as provided
11 under the plan. The assets and obligations of the plan in
12 effect immediately prior to the effective date of chapter
13 76-96 shall be construed to be the assets and obligations of
14 the successor plan created herein.

15 c. In recognition of s. 10, Art. I of the State
16 Constitution, prohibiting the impairment of obligations of
17 contracts, it is the intent of the Legislature that no action
18 be taken whose purpose is to impair any bond indenture or
19 financing agreement or any revenue source committed by
20 contract to such bond or other indebtedness issued or incurred
21 by the association or any other entity created under this
22 subsection.

23 7. On such coverage, an agent's remuneration shall be
24 that amount of money payable to the agent by the terms of his
25 or her contract with the company with which the business is
26 placed. However, no commission will be paid on that portion of
27 the premium which is in excess of the standard premium of that
28 company.

29 8. Subject to approval by the department, the
30 association may establish different eligibility requirements
31 and operational procedures for any line or type of coverage

1 for any specified eligible area or portion of an eligible area
2 if the board determines that such changes to the eligibility
3 requirements and operational procedures are justified due to
4 the voluntary market being sufficiently stable and competitive
5 in such area or for such line or type of coverage and that
6 consumers who, in good faith, are unable to obtain insurance
7 through the voluntary market through ordinary methods would
8 continue to have access to coverage from the association. When
9 coverage is sought in connection with a real property
10 transfer, such requirements and procedures shall not provide
11 for an effective date of coverage later than the date of the
12 closing of the transfer as established by the transferor, the
13 transferee, and, if applicable, the lender.

14 9. Notwithstanding any other provision of law:

15 a. The pledge or sale of, the lien upon, and the
16 security interest in any rights, revenues, or other assets of
17 the association created or purported to be created pursuant to
18 any financing documents to secure any bonds or other
19 indebtedness of the association shall be and remain valid and
20 enforceable, notwithstanding the commencement of and during
21 the continuation of, and after, any rehabilitation,
22 insolvency, liquidation, bankruptcy, receivership,
23 conservatorship, reorganization, or similar proceeding against
24 the association under the laws of this state or any other
25 applicable laws.

26 b. No such proceeding shall relieve the association of
27 its obligation, or otherwise affect its ability to perform its
28 obligation, to continue to collect, or levy and collect,
29 assessments, market equalization or other surcharges,
30 projected recoveries from the Florida Hurricane Catastrophe
31

1 Fund, reinsurance recoverables, or any other rights, revenues,
2 or other assets of the association pledged.

3 c. Each such pledge or sale of, lien upon, and
4 security interest in, including the priority of such pledge,
5 lien, or security interest, any such assessments, emergency
6 assessments, market equalization or renewal surcharges,
7 projected recoveries from the Florida Hurricane Catastrophe
8 Fund, reinsurance recoverables, or other rights, revenues, or
9 other assets which are collected, or levied and collected,
10 after the commencement of and during the pendency of or after
11 any such proceeding shall continue unaffected by such
12 proceeding.

13 d. As used in this subsection, the term "financing
14 documents" means any agreement, instrument, or other document
15 now existing or hereafter created evidencing any bonds or
16 other indebtedness of the association or pursuant to which any
17 such bonds or other indebtedness has been or may be issued and
18 pursuant to which any rights, revenues, or other assets of the
19 association are pledged or sold to secure the repayment of
20 such bonds or indebtedness, together with the payment of
21 interest on such bonds or such indebtedness, or the payment of
22 any other obligation of the association related to such bonds
23 or indebtedness.

24 e. Any such pledge or sale of assessments, revenues,
25 contract rights or other rights or assets of the association
26 shall constitute a lien and security interest, or sale, as the
27 case may be, that is immediately effective and attaches to
28 such assessments, revenues, contract, or other rights or
29 assets, whether or not imposed or collected at the time the
30 pledge or sale is made. Any such pledge or sale is effective,
31 valid, binding, and enforceable against the association or

1 other entity making such pledge or sale, and valid and binding
2 against and superior to any competing claims or obligations
3 owed to any other person or entity, including policyholders in
4 this state, asserting rights in any such assessments,
5 revenues, contract, or other rights or assets to the extent
6 set forth in and in accordance with the terms of the pledge or
7 sale contained in the applicable financing documents, whether
8 or not any such person or entity has notice of such pledge or
9 sale and without the need for any physical delivery,
10 recordation, filing, or other action.

11 f. There shall be no liability on the part of, and no
12 cause of action of any nature shall arise against, any member
13 insurer or its agents or employees, agents or employees of the
14 association, members of the board of directors of the
15 association, or the department or its representatives, for any
16 action taken by them in the performance of their duties or
17 responsibilities under this subsection. Such immunity does not
18 apply to actions for breach of any contract or agreement
19 pertaining to insurance, or any willful tort.

20 (c) The provisions of paragraph (b) are applicable
21 only with respect to:

22 1. Those areas that were eligible for coverage under
23 this subsection on April 9, 1993; or

24 2. Any county or area as to which the department,
25 after public hearing, finds that the following criteria exist:

26 a. Due to the lack of windstorm insurance coverage in
27 the county or area so affected, economic growth and
28 development is being deterred or otherwise stifled in such
29 county or area, mortgages are in default, and financial
30 institutions are unable to make loans;

31

1 b. The county or area so affected has adopted and is
2 enforcing the structural requirements of the State Minimum
3 Building Codes, as defined in s. 553.73, for new construction
4 and has included adequate minimum floor elevation requirements
5 for structures in areas subject to inundation; and

6 c. Extending windstorm insurance coverage to such
7 county or area is consistent with and will implement and
8 further the policies and objectives set forth in applicable
9 state laws, rules, and regulations governing coastal
10 management, coastal construction, comprehensive planning,
11 beach and shore preservation, barrier island preservation,
12 coastal zone protection, and the Coastal Zone Protection Act
13 of 1985.

14
15 Any time after the department has determined that the criteria
16 referred to in this subparagraph do not exist with respect to
17 any county or area of the state, it may, after a subsequent
18 public hearing, declare that such county or area is no longer
19 eligible for windstorm coverage through the plan.

20 (d) For the purpose of evaluating whether the criteria
21 of paragraph (c) are met, such criteria shall be applied as
22 the situation would exist if policies had not been written by
23 the Florida Residential Property and Casualty Joint
24 Underwriting Association and property insurance for such
25 policyholders was not available.

26 (e) Notwithstanding the provisions of subparagraph
27 (c)2. or paragraph (d), eligibility shall not be extended to
28 any area that was not eligible on March 1, 1997, except that
29 the department may act with respect to any petition on which a
30 hearing was held prior to May 9, 1997.

31

1 Section 2. This act shall take effect upon becoming a
2 law.

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5 SENATE SUMMARY

6 Includes surplus lines insurers in the Florida Windstorm
7 Underwriting Association. Modifies the composition of the
8 association's board. Provides for assessments and for
9 assessment protection. Provides for rate approval.

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